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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 ANNE JEDIDI-STANDLEY,

11 Plaintiff,

12 v.

13 NANCY A BERRYHILL, Acting
Commissioner of Social Security,

14 Defendant.
15

CASE NO. 3:17-CV-05207-DWC

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

16 Plaintiff Anne Jedidi-Standley¹ filed this action, pursuant to 42 U.S.C. § 405(g), for
17 judicial review of Defendant's denial of Plaintiff's application for disability insurance benefits
18 ("DIB"). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule
19 MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate
20 Judge. *See* Dkt. 5.
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23 ¹ The Court acknowledges that during Plaintiff's May 2012 and April 2014 administrative hearings, she
24 stated "Jedidi" had been dropped from her last name. AR 42-43, 88-89. However, the Court's records, docket, and
the parties' briefs refer to Plaintiff as Jedidi-Standley. As such, the Court uses that as her last name in this Order.

1 After considering the record, the Court concludes the Administrative Law Judge (“ALJ”)
2 erred when he failed to provide specific and legitimate reasons, supported by substantial
3 evidence, for giving limited weight to the medical opinions of Drs. Mary Lemberg, M.D., and
4 Dana Harmon, Ph.D. Had the ALJ properly considered the opinions of these two doctors, the
5 residual functional capacity (“RFC”) may have included additional limitations. The ALJ’s error
6 is therefore not harmless, and this matter is reversed and remanded pursuant to sentence four of
7 42 U.S.C. § 405(g) to the Acting Commissioner of Social Security (“Commissioner”) for further
8 proceedings consistent with this Order.

9 FACTUAL AND PROCEDURAL HISTORY

10 On June 18, 2010, Plaintiff filed an application for DIB, alleging disability as of April 15,
11 2010. *See* Dkt. 7, Administrative Record (“AR”) 147. The application was denied upon initial
12 administrative review and reconsideration. *See* AR 147. Plaintiff has had three ALJ hearings.
13 The first hearing was held before ALJ Rebekah Ross on May 16, 2012. AR 40-85. In a decision
14 dated September 14, 2012, ALJ Ross determined Plaintiff to be not disabled. AR 144-62.
15 Plaintiff’s request for review of the ALJ’s decision was granted by the Appeals Council, which
16 vacated ALJ Ross’s hearing decision and remanded Plaintiff’s claim to the ALJ. AR 168-71.

17 Plaintiff received a second hearing before ALJ Ross on April 23, 2014. *See* AR 86-113.
18 On May 12, 2014, the ALJ granted a partially favorable decision, finding Plaintiff disabled as of
19 July 1, 2013, her 50th birthday. AR 7-30. Plaintiff’s request for review of the ALJ’s decision was
20 denied by the Appeals Council, making the ALJ’s decision the final decision of the
21 Commissioner. *See* AR 1276-78; 20 C.F.R. § 404.981, § 416.1481. Plaintiff appealed to the
22 United States District Court for the Western District of Washington, which remanded the case
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1 for further proceedings. *See* AR 1289-1300; *Jedidi v. Colvin*, 2016 WL 1470201 (W.D. Wash.
2 April 15, 2016).

3 Plaintiff received a third hearing before ALJ S. Andrew Grace on September 13, 2016.
4 AR 1207-23. In a decision dated January 13, 2017, ALJ Grace found Plaintiff disabled as of July
5 1, 2013. AR 1174-98. Plaintiff did not file written exceptions with the Appeals Council, making
6 the September 13, 2016 decision the final decision of the Commissioner. 20 C.F.R. § 404.981, §
7 416.1481. Plaintiff now appeals ALJ Grace's January 13, 2017 decision.²

8 In Plaintiff's Opening Brief, Plaintiff maintains the ALJ erred by failing to provide
9 specific and legitimate reasons, supported by substantial evidence, to reject the medical opinions
10 of: (1) Dr. Mary Lemberg, M.D.; and (2) Dr. Dana Harmon. Dkt. 9, p. 3.

11 Because the ALJ found Plaintiff disabled as of July 1, 2013, the relevant time period for
12 this case is the alleged onset date – April 15, 2010 – through the date prior to the finding of
13 disability – June 30, 2013. *Id.*

14 STANDARD OF REVIEW

15 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of
16 social security benefits if the ALJ's findings are based on legal error or not supported by
17 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
18 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

19 DISCUSSION

20 **I. Whether the ALJ properly considered the medical opinion evidence.**

21 Plaintiff argues the ALJ erred in his evaluation of the opinion evidence from examining
22 physicians Drs. Lemberg and Harmon. Dkt. 9, pp. 3-10.

23 ² When stating "the ALJ" or "the ALJ's decision" throughout this Order, the Court is referencing ALJ
24 Grace and his January 13, 2017 decision.

1 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted
2 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
3 1996) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990); *Embrey v. Bowen*, 849 F.2d
4 418, 422 (9th Cir. 1988)). When a treating or examining physician’s opinion is contradicted, the
5 opinion can be rejected “for specific and legitimate reasons that are supported by substantial
6 evidence in the record.” *Lester*, 81 F.3d at 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035,
7 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can
8 accomplish this by “setting out a detailed and thorough summary of the facts and conflicting
9 clinical evidence, stating his interpretation thereof, and making findings.” *Reddick v. Chater*, 157
10 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

11 A. Dr. Lemberg

12 Plaintiff maintains the ALJ erred when he failed to include in the RFC all limitations
13 assessed by examining physician Dr. Lemberg. Dkt. 9, pp. 3-8, 11.

14 Dr. Lemberg conducted a comprehensive psychiatric evaluation of Plaintiff on December
15 2, 2010. AR 596-603. After her examination, Dr. Lemberg ascertained the following:

16 The claimant does have the ability to perform simple and repetitive tasks, and
17 would not have difficulty completing detailed and complex tasks, based upon her
18 performance on the mental status exam. The claimant would find it difficult to
19 adapt to new environments based on our interview today and mental status exam.
20 The claimant demonstrated impairments today with short-term memory and
21 calculation. The claimant would not have difficulty accepting instructions from
22 supervisors, but would have some difficulty interacting with co-workers and the
23 public. The claimant can attend work on a consistent basis, though would be
24 limited in the tasks she could do from psychiatric and physical reasons. The
claimant could not complete a normal workday or workweek without problematic
interruption from her psychiatric conditions. The degree of her tearfulness and
perseveration would be barriers to employment and is impacting her daily
functioning. I anticipate the claimant to have significant difficulty dealing with
the usual stress encountered in a competitive work environment.

AR 601-02.

1 The ALJ gave significant weight to Dr. Lemberg's determinations that Plaintiff could
2 perform simple and repetitive tasks, work consistently, and accept instructions from supervisors.
3 AR 1192. He also gave significant weight to Dr. Lemberg's finding that Plaintiff would have
4 problems interacting with coworkers and the public. AR 1192. However, the ALJ gave little
5 weight to various other parts of Dr. Lemberg's assessment, which Plaintiff challenges. *See* AR
6 1192-93; Dkt. 9, pp. 3-8.

7 The ALJ provided five points for discrediting Dr. Lemberg's opinion. **First**, the ALJ
8 stated:

9 Little weight is given to the assessment that the claimant would have difficulty
10 adapting to new environments, that she would be limited in completing tasks due
11 to psychiatric and physical reasons, that she would be unable to complete a
12 normal workday or workweek without interruptions from her psychiatric
conditions and that tearfulness and preservation as well as stress would limit the
claimant's ability to perform work activities. These findings are subjective and
based mostly on the claimant's self-reporting, which is inconsistent with medical
treatment records, indicating limited and routine care along with improvement.

13 AR 1192.

14 The ALJ gave little weight to this portion of Dr. Lemberg's opinion because her opinion
15 appeared to be subjective and based on Plaintiff's self-reporting. AR 1192. An ALJ may reject a
16 physician's opinion "if it is based 'to a large extent' on a claimant's self-reports that have been
17 properly discounted as incredible." *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)
18 (quoting *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999)). This
19 situation is distinguishable from one in which the doctor provides her own observations in
20 support of her assessments and opinions. *See Ryan v. Comm'r of Soc. Sec. Admin.*, 528 F.3d
21 1194, 1199-1200 (9th Cir. 2008). "[W]hen an opinion is not more heavily based on a patient's
22 self-reports than on clinical observations, there is no evidentiary basis for rejecting the opinion."
23 *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) (citing *Ryan*, 528 F.3d at 1199-1200).
24 Notably, however, a clinical interview and mental status evaluation are "objective measures"

1 which “cannot be discounted as a self-report.” *See Buck v. Berryhill*, -- F.3d ---, 2017 WL
2 3862450, at *6 (9th Cir. Sept. 5, 2017).

3 In this case, Dr. Lemberg’s findings were based upon a comprehensive psychiatric
4 evaluation of Plaintiff. *See* AR 596-603. Dr. Lemberg’s psychiatric evaluation included both a
5 clinical interview and mental status examination. *Id.* As such, Dr. Lemberg’s report was neither
6 subjective nor primarily based upon self-reporting. *See Buck*, 2017 WL 3862450, at *6. The ALJ
7 therefore erred in giving little weight to Dr. Lemberg’s findings for being subjective and based
8 on self-reports, as these are not specific, legitimate reasons under these circumstances. *See id.*

9 The ALJ also gave little weight to a portion of Dr. Lemberg’s assessment of Plaintiff
10 because he found it was “inconsistent with medical treatment records,” which he said indicated
11 “limited and routine care along with improvement.” AR 1192. An ALJ need not accept an
12 opinion which is inadequately supported “by the record as a whole.” *See Batson v. Comm’r of*
13 *Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). Nonetheless, a conclusory statement
14 finding an opinion inconsistent with the overall record is insufficient to reject the opinion. *See*
15 *Embrey*, 849 F.2d at 421-22. As the Ninth Circuit has stated:

16 To say that medical opinions are not supported by sufficient objective findings or
17 are contrary to the preponderant conclusions mandated by the objective findings
18 does not achieve the level of specificity our prior cases have required, even when
19 the objective factors are listed seriatim. The ALJ must do more than offer his
20 conclusions. He must set forth his own interpretations and explain why they,
21 rather than the doctors’, are correct.

22 *Id.* (internal footnote omitted).

23 Here, the ALJ’s assertion that Dr. Lemberg’s findings were “inconsistent with medical
24 treatment records” is a conclusory statement that does not meet the level of specificity required
to reject Dr. Lemberg’s opinion. For example, the ALJ failed to identify any evidence in the
record and explain how it is inconsistent with Dr. Lemberg’s opinion on Plaintiff’s limited

1 abilities to adapt to new environments and complete tasks. *See* AR 1192. Hence, the ALJ's
2 conclusory statement was not a specific, legitimate reason to reject Dr. Lemberg's opinion. *See*
3 *McAllister v. Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989) (an ALJ's rejection of a physician's
4 opinion on the ground that it was contrary to the record was "broad and vague, failing to specify
5 why the ALJ felt the treating physician's opinion was flawed").

6 **Second**, regarding Dr. Lemberg's conclusion that Plaintiff would have interruptions
7 throughout the workday, the ALJ stated:

8 [Dr. Lemberg's] assertion . . . is unsupported by the contemporaneous treatment
9 records, the generally unremarkable examination, and unjustified by objective
10 factors. As noted in the prior decision, [Plaintiff's] mood is generally described
11 as good or stable, she is better when taking medications, and she is doing activity.

12 AR 1192.

13 The ALJ once again provided vague, conclusory reasons for giving little weight to Dr.
14 Lemberg's opinion. Specifically, the ALJ's statement that Dr. Lemberg's opinion was
15 "unsupported by the contemporaneous treatment records" was conclusory because the ALJ did
16 not state which records were relevant, or how they were relevant, to Dr. Lemberg's opinion.
17 Likewise, the ALJ's statement that Dr. Lemberg's opinion was based on "the generally
18 unremarkable examination" was conclusory because the ALJ did not explain what about the
19 examination was unremarkable. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015)
20 ("the agency [must] set forth the reasoning behind its decisions in a way that allows for
21 meaningful review"). The ALJ's remark regarding Plaintiff's mood, medication, and activity was
22 similarly conclusory because the ALJ did not explain how these things relate to Plaintiff's
23 interruptions. *See* AR 1192; *Embrey*, 849 F.2d at 421-22 (conclusory reasons do "not achieve the
24 level of specificity" required to justify an ALJ's rejection of an opinion). Accordingly, these

1 were not specific, legitimate reasons to justify rejecting Dr. Lemberg's finding regarding
2 Plaintiff's interruptions throughout the workday.

3 The ALJ further gave little weight to Dr. Lemberg's opinion regarding Plaintiff's
4 interruptions during the workday because he determined Dr. Lemberg's conclusion was
5 "unjustified by objective factors." AR 1192. In fact, as discussed above, Dr. Lemberg's opinion
6 was based on objective records because she conducted a clinical interview and mental status
7 examination. *Buck*, 2017 WL 3862450, at *6. Thus, this was not a specific and legitimate reason
8 to reject Dr. Lemberg's finding.

9 **Third**, the ALJ discussed Dr. Lemberg's opinion that Plaintiff "would have 'significant
10 difficulty' in dealing with the usual stress encountered in competitive work, and that she would
11 be unable to complete a normal workday/week due to psychiatric reasons." AR 1192.

12 Specifically, the ALJ concluded:

13 [T]his does not mean that the claimant would be unable to deal with the type of
14 work accommodated within the framework of the claimant's residual functional
15 capacity, it is inconsistent with her daily activities, and it is unsupported by the
16 GAF score, indicating fairly moderate symptoms.

17 AR 1192.

18 Notwithstanding Dr. Lemberg's findings, the ALJ concluded Plaintiff would be able to
19 work within the framework of her RFC. AR 1192. However, the ALJ did not explain how
20 Plaintiff's RFC accommodates Dr. Lemberg's findings. *See* AR 1192. Likewise, although the
21 ALJ asserted Dr. Lemberg's findings were inconsistent with Plaintiff's daily activities, he did not
22 say which of Plaintiff's activities were inconsistent with Dr. Lemberg's opinion or explain how
23 Plaintiff's activities were inconsistent with Dr. Lemberg's findings. *See* AR 1192. He also did
24 not provide any record citations, which could have supported his opinion. *See* AR 1192. Hence,
the ALJ's reasoning was conclusory and these were not specific, legitimate reasons to reject Dr.

1 Lemberg's opinion regarding Plaintiff's ability to cope with stress and complete a normal
2 workday/week schedule. *Embrey*, 849 F.2d 418, 421-22.

3 The ALJ further opined Dr. Lemberg's conclusions were unsupported by Plaintiff's
4 global assessment of functioning ("GAF") score. AR 1192. A GAF score is "a rough estimate of
5 an individual's psychological, social, and occupational functioning." *Garrison v. Colvin*, 759
6 F.3d 995, 1002 n.4 (9th Cir. 2014) (internal quotations and citation omitted). A GAF score is
7 medical opinion evidence which cannot be summarily dismissed. *Vanbibber v. Carolyn [Colvin]*,
8 2014 WL 29665, at *3 (W.D. Wash. Jan 3, 2014). However, GAF scores "do not control
9 determinations of whether a person's mental impairments rise to the level of a disability."
10 *Garrison*, 759 F.3d at 1002 n.4 (citation omitted).

11 In this case, the ALJ concluded Plaintiff's GAF score was inconsistent with Dr.
12 Lemberg's findings regarding Plaintiff's ability to cope with workplace stress and complete a
13 workday/week. But, the ALJ failed to explain how Plaintiff's GAF score and Dr. Lemberg's
14 opinion were inconsistent. *See* AR 1192. The ALJ also did not provide any discussion or record
15 citations to support his conclusion. *See Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003)
16 ("We require the ALJ to build an accurate and logical bridge from the evidence to her
17 conclusions so that we may afford the claimant meaningful review of the SSA's ultimate
18 findings."). Hence, the ALJ's conclusory statement was not a specific, legitimate reason to reject
19 Dr. Lemberg's findings on this issue.

20 **Fourth**, the ALJ gave limited weight to Dr. Lemberg's opinion that Plaintiff would be
21 unable to cope with stress in the workplace because:

22 [T]his assessment is speculative and based on a one-time assessment.
23 Furthermore, the claimant was under stress at the time she was seeking financial
24 assistance. This statement appears to be based upon the claimant's exaggerated
self-reported levels of depression and anxiety in the context of this evaluation. For

1 example, less than a month before Dr. Lemberg's evaluation, the claimant
2 reported in the context of treatment that she was in a better mood due to Effexor
medication, which was working well. Exhibit 34F/6.

3 AR 1193.

4 The ALJ gave little weight to Dr. Lemberg's assessment of Plaintiff's ability to cope with
5 stress because he found her assessment "speculative." AR 1193. But, the ALJ did not state what
6 exactly was "speculative" about Dr. Lemberg's opinion. *See* AR 1193. As such, this was not a
7 specific and legitimate reason to reject Dr. Lemberg's conclusion about Plaintiff's ability to cope
8 with stress. *Embrey*, 849 F.2d at 421-22.

9 In addition, the ALJ discounted Dr. Lemberg's opinion because it was "based on a one-
10 time assessment." AR 1193. An examining doctor, by definition, does not have a treating
11 relationship with a claimant and usually only examines the claimant one time. *See* 20 C.F.R. §
12 404.1527(c). "When considering an examining physician's opinion . . . it is the quality, not the
13 quantity of the examination that is important. Discrediting an opinion because the examining
14 doctor only saw claimant one time would effectively discredit most, if not all, examining doctor
15 opinions." *Yeakey v. Colvin*, 2014 WL 3767410, at *6 (W.D. Wash. July 31, 2014). Accordingly,
16 discrediting Dr. Lemberg's opinion because she only saw Plaintiff once was not a specific and
17 legitimate reason for doing so.

18 The ALJ further asserted Dr. Lemberg relied on Plaintiff's "exaggerated self-reported
19 levels of depression and anxiety." AR 1193. To support this proposition, the ALJ cited one
20 record in which Plaintiff reported taking Effexor was working well for her mood. *See* AR 896;
21 1193. Nonetheless, the ALJ failed to explain how Plaintiff's mood improvement on Effexor was
22 relevant to her stress-coping abilities. *See Embrey*, 849 F.2d at 422 (an ALJ cannot merely state
23 facts he claims "point toward an adverse conclusion and make[] no effort to relate any of these
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1 objective factors to any of the specific medical opinions and findings he rejects”). Additionally,
2 “it is error for an ALJ to pick out a few isolated instances of [mental health] improvement over a
3 period of months or years and to treat them as a basis for concluding a claimant is capable of
4 working.” *Garrison*, 759 F.3d at 1017 (citation omitted). The ALJ therefore erred in relying upon
5 this single report to discount Dr. Lemberg’s finding because his reasoning was conclusory and
6 the ALJ did not consider Plaintiff’s overall mental health.

7 With respect to the ALJ’s assertion that Dr. Lemberg improperly relied on Plaintiff’s self-
8 reports, the Ninth Circuit has held:

9 Psychiatric evaluations . . . will always depend in part on the patient’s self-report,
10 as well as on the clinician’s observations of the patient. But such is the nature of
11 psychiatry . . . Thus, the rule allowing an ALJ to reject opinions based on self-
12 reports does not apply in the same manner to opinions regarding mental illness.

13 *Buck*, 2017 WL 3862450, at *6 (citations omitted). Here, Dr. Lemberg is a psychiatrist whose
14 evaluations necessarily rely on Plaintiff’s self-reports. *See id.* Hence, rejecting Dr. Lemberg’s
15 findings for being based on Plaintiff’s self-reports was not a specific and legitimate reason for
16 doing so.

17 **Lastly**, the ALJ found:

18 [Dr. Lemberg’s] evaluation was not specifically performed to address physical
19 issues, which Dr. Lemberg stated could interfere with work. These findings are
20 overall inconsistent with the claimant’s daily activities and it appears that Dr.
21 Lemberg had limited access to the claimant’s longitudinal treatment record.

22 AR 1193.

23 The ALJ gave little weight to Dr. Lemberg’s conclusion that Plaintiff’s physical issues
24 could interfere with work because the evaluation was not designed to address physical issues.

AR 1193. Dr. Lemberg is a medical doctor who has obtained her M.D. *See* AR 596. “Although a
medical doctor’s area of specialty is relevant, a physician with a doctoral medical degree (M.D.)

1 is qualified to assess a claimant's physical functional limitations." *Fischer v. Colvin*, 2013 WL
2 5437571, at *9 (W.D. Wash. Sept. 27, 2013). Given that Dr. Lemberg attended medical school,
3 further training in the specialty of psychiatry did not deprive her of the capabilities she obtained
4 with her M.D. *See id.* This, therefore, was not a specific and legitimate reason to discredit Dr.
5 Lemberg's opinion regarding Plaintiff's physical abilities. On remand, the ALJ shall not discredit
6 Dr. Lemberg's opinion because it was partly based on Plaintiff's physical limitations.

7 In addition, the ALJ discounted Dr. Lemberg's findings about Plaintiff's physical
8 capabilities because he ascertained Dr. Lemberg's findings were inconsistent with Plaintiff's
9 "daily activities." AR 1193. Nevertheless, the ALJ again failed to explain which of Plaintiff's
10 activities were inconsistent with, and how they conflicted with, Dr. Lemberg's opinion. Thus,
11 this conclusory reason was not a specific, legitimate reason to reject this part of Dr. Lemberg's
12 opinion. *Embrey*, 849 F.2d at 421-22. If the ALJ intends to reject Dr. Lemberg's findings as
13 inconsistent with the medical treatment records on remand, he must provide specific record
14 citations and explain how they are inconsistent with Dr. Lemberg's findings.

15 The ALJ's final reason for giving little weight to Dr. Lemberg's opinions regarding
16 Plaintiff's physical issues interfering with work was because she had "limited access" to
17 Plaintiff's "longitudinal treatment record." AR 1193. Defendant maintains, citing *Bayliss*, "a
18 doctor's failure to review other medical records in a case can provide a basis to discount that
19 doctor's opinion." Dkt. 15, p. 11 (citing *Bayliss*, 427 F.3d at 1217). In *Bayliss*, the Ninth Circuit
20 affirmed the ALJ's decision to give less weight to an examining physician because the physician
21 did not review objective medical data or reports from treating physicians, but instead based his
22 opinion entirely on the claimant's complaints and information submitted by family, friends, and
23 a former counselor. 437 F.3d at 1217. Unlike in *Bayliss*, Dr. Lemberg reviewed two of Plaintiff's
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1 treatment records and also relied on her own observations, results from the mental status
2 examination, and Plaintiff's reported health history and subjective complaints. Hence, this was
3 not a specific, legitimate reason to give less weight to Dr. Lemberg's opinion under these
4 circumstances.

5 For the above stated reasons, the Court finds the ALJ has not provided specific and
6 legitimate reasons, supported by substantial evidence, to give little weight to Dr. Lemberg's
7 opinion. Accordingly, the ALJ erred.

8 "[H]armless error principles apply in the Social Security context." *Molina v. Astrue*, 674
9 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is not prejudicial to the
10 claimant or "inconsequential" to the ALJ's "ultimate nondisability determination." *Stout v.*
11 *Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see also Molina*, 674 F.3d at
12 1115. The determination as to whether an error is harmless requires a "case-specific application
13 of judgment" by the reviewing court, based on an examination of the record made "'without
14 regard to errors' that do not affect the parties' 'substantial rights.'" *Molina*, 674 F.3d at 1118-
15 1119 (quoting *Shinseki v. Sanders*, 556 U.S. 396, 407 (2009)).

16 Had the ALJ properly considered all of Dr. Lemberg's opined limitations, the RFC may
17 have included additional limitations. For example, the RFC may have included the limitations
18 that Plaintiff would have trouble adapting to new environments, would struggle completing
19 tasks, and could not complete a normal workday/week. The RFC did not contain these
20 limitations. Therefore, if Dr. Lemberg's opinions were included in the RFC and the hypothetical
21 questions posed to the vocational expert, the ultimate disability determination may have changed
22 for the relevant time period. Accordingly, the ALJ's failure to properly consider Dr. Lemberg's
23 opinion regarding Plaintiff's limitations is not harmless and requires reversal.

1 B. Dr. Harmon

2 Plaintiff next asserts the ALJ failed to provide specific and legitimate reasons, supported
3 by substantial evidence, for giving little weight to some of the findings by Dr. Dana Harmon,
4 Ph.D. Dkt. 9, pp. 3, 8-11. On August 6, 2013, Dr. Harmon completed a psychological and
5 psychiatric evaluation of Plaintiff. AR 1024-47. Specifically, Dr. Harmon conducted a clinical
6 interview, mental status examination, and personality assessment inventory. AR 1024-47.

7 As summarized by the ALJ, Dr. Harmon found the following:

8 [T]he claimant was mildly to moderately limited in her ability to understand,
9 remember, carry out, and persist in tasks by following short, simple instructions,
10 performing activities within a schedule/maintaining regular attendance, and
adapting to changes in a routine work setting. A mental status examination fell
within limits.

11 AR 1194. Dr. Harmon also determined Plaintiff was markedly impaired in her ability to
12 communicate and perform effectively in a work setting, complete a normal workday/workweek
13 without interruptions from psychological impairments, and maintain appropriate behavior in a
14 work setting. AR 1026.

15 Regarding Dr. Harmon's findings, the ALJ opined, in relevant part:

16 I give little weight to Dr. Harmon's findings that the claimant has marked
17 impairment in communicating effectively in a work setting, completing a normal
workday/workweek, and maintaining appropriate behavior in a work setting
18 because this is inconsistent with the record as a whole and with the claimant's
demonstrated functioning, and appears to be largely based upon the claimant's
19 self-reported symptoms. Lastly, Dr. Harmon's rating of the claimant's GAF score
from 50-55 is not useful in my analysis of this case for the reasons explained
above.

20 AR 1195.³
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23 ³ The ALJ gave partial weight to a portion of Dr. Harmon's opinion and little weight to Plaintiff's GAF
24 score. AR 1194-95. Plaintiff does not challenge these findings by the ALJ. *See* Dkt. 9, pp. 8-10. Accordingly, the
Court does not discuss these parts of the ALJ's decision.

1 As stated above, an ALJ must do more than state that a physician's findings are contrary
2 to the record; he must specifically explain why a physician's opinion was flawed. *See McAllister*,
3 888 F.2d at 602; *Embrey*, 849 F.2d 421-22. Here, the ALJ summarily concluded Dr. Harmon's
4 findings were inconsistent with the record and Plaintiff's functioning. *See* AR 1195. The ALJ
5 failed, however, to cite any part of the record and specifically explain how it was inconsistent
6 with Dr. Harmon's opinion. Without more, these conclusory statements were not specific,
7 legitimate reasons to give little weight to Dr. Harmon's opinions.

8 Moreover, as previously discussed, an ALJ may reject a physician's opinion if it is
9 primarily based upon a claimant's properly discounted self-reports. *Tommasetti*, 533 F.3d at
10 1041. Yet as the Ninth Circuit has held, clinical interviews and mental status examinations are
11 objective measures, not self-reports. *Buck*, 2017 WL 3862450 at *6. In this case, Dr. Harmon
12 conducted a clinical interview, mental status examination, and personality assessment inventory.
13 AR 1024-47. Accordingly, Dr. Harmon's findings were based upon objective measures and this
14 was not a specific, legitimate reason to give little weight to his findings.

15 For the above stated reasons, the Court concludes the ALJ failed to provide specific,
16 legitimate reasons supported by substantial evidence for giving little weight to Dr. Harmon's
17 opinion. Therefore, the ALJ erred. Had the ALJ properly considered Dr. Hurst's opinion, the
18 RFC and the hypothetical questions posed to the vocational expert may have included additional
19 limitations. As the ultimate disability decision may have changed, the ALJ's error is not
20 harmless. *See Molina*, 674 F.3d at 1115.

21 CONCLUSION

22 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded
23 Plaintiff was not disabled during the relevant time period. Accordingly, Defendant's decision to
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1 deny benefits is reversed and this matter is remanded for further administrative proceedings in
2 accordance with the findings contained herein.

3 Dated this 20th day of September, 2017.

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6 David W. Christel
7 United States Magistrate Judge
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